

TENTATIVE AGENDA  
**STATE WATER CONTROL BOARD MEETING**  
 MONDAY, JUNE 25, 2012

House Room C  
 General Assembly Building  
 9th and Broad Streets  
 Richmond, VA 23219

CONVENE - 9:30 A.M.

			<b>TAB</b>
<b>I.</b>	<b>Minutes</b> (April 5, 2012)		A
<b>II.</b>	<b>Legislative Update</b>	Jenkins	
<b>III.</b>	<b>Final Regulations</b> General VPDES Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed (9VAC25-820)	Brockenbrough B	
<b>IV.</b>	<b>Proposed Regulations</b> Facility and Aboveground Storage Tank Regulations (9VAC25-91)	Porterfield	C
<b>V.</b>	<b>Withdrawals</b> Water Quality Standards Amendment - Exception State Waters Designation - Portion of Bull Run (9VAC25-260)	Barron	D
<b>VI.</b>	<b>Water Quality Management Planning</b> Water Quality Management Planning Regulation Amendments North Fork Holston Mercury TMDL, located in Scott, Washington, Smyth, Bland, Tazewell, and Russell Counties - Mercury Albemarle Canal/North Landing River TMDL, located in the Cities of Virginia Beach and Chesapeake - Total Phosphorus Northwest River TMDL, located in the City of Chesapeake and in the eastern portion of the City of Virginia Beach - Total Phosphorus	Lott	E
<b>VII.</b>	<b>Significant Noncompliers Report</b>	O'Connell	F
<b>VIII.</b>	<b>Consent Special Orders (VPDES Permit Program/Unpermitted Discharges)</b> Tidewater Regional Office Hampton Roads Sanitation District; Cities of Chesapeake, Hampton. Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach And Williamsburg; the Counties of Gloucester, Isle of Wight and York; the James City Service Authority and Town of Smithfield Bundick Well and Pump Company (Accomack Co.) City of Chesapeake - Lake Gaston Water Treatment Plant Coastal Precast Systems, LLC (Chesapeake) Blue Ridge Regional Office City of Martinsville Northern Regional Office Fairfax Co. School Board/Gunston Elementary School STP Piedmont Regional Office	O'Connell	G

- IX. Consent Special Orders (VWP Permit Program/  
Wetlands/Ground Water Permit Program)** O’Connell H
- Tidewater Regional Office
    - City of Newport News
    - VA Timberline, LLC - Lawnes Point Subdivision (Isle of Wight Co.)
  - Valley Regional Office
    - Warren E. Beery-Dry River Impacts Office (Rockingham Co.)
  - Piedmont Regional Office
    - Yimmer, LLC (Henrico Co.)
- X. Public Forum**
- XI. Other Business** Davenport
- Division Director's Report
  - Delegated TMDL Approvals
    - Bacteria TMDL for the Hoffler Creek Watershed (Portsmouth and Chesapeake)
    - Bacterial TMDL for the James River Tributaries (City of Richmond)
    - Bacteria TMDL for the Bear Garden Creek Watershed (Buckingham Co.)
    - Fecal Coliform Bacteria TMDL in Moore's Creek (Albemarle Co.)
    - Shellfish Bacteria TMDL for Upper Rappahannock Tidal River, Unsegmented Estuaries in E23, Little Carter Creek, Jugs Creek, Piscataway Creek, Mark Haven Beach, and Garrett's Marina (Essex, Richmond, Westmoreland and Northumberland Counties)
    - E. coli TMDLs in the Upper Clinch River Watershed (Tazewell Co.)
    - E. coli TMDL for Unnamed Tributary to Nebletts Mill Run and Hatcher Run (Sussex and Dinwiddie Counties)
    - E. coli TMDL for Assamoosick Swamp and Tributaries (Sussex and Southampton Counties)
    - Indian, Tabbs, Dyer, and Antipoison Creeks TMDL for Shellfish Condemnation Areas Listed Due to Bacteria Pollution (Lancaster Co.)
    - Parker Creek TMDL Benthic (Accomack Co.)
  - Delegated TMDL Implementation Plan Approvals
    - Lewis Creek Sediment TMDL (Russell County)
    - South River and Christians Creek TMDL (Augusta County) - Bacteria and Sediment in South River and Christians and Total Phosphorus in South River
    - Hays, Moffatts, Walter and Otts Creeks TMDL (Augusta and Rockbridge Counties) - Bacteria
    - Ivy Creek, Fishing Creek, Blackwater Creek, Tomahawk Creek, Burton Creek, Judith Creek, Beaver Creek and a portion of the James River (Lynchburg, as well as Amherst, Bedford and Campbell Counties) - Bacteria
    - Mill Creek and Powhatan Creek (James City County) - Bacteria
    - Slate River and Rock Island Creek (Buckingham County) - Bacteria
    - Craig Run, Browns Run, and Marsh Run Bacteria TMDL (Fauquier County)
    - Little Dark Run and Robinson River (Madison and Culpeper Counties) - Bacteria
  - Future Meetings (September 27-28 & December 6-7)

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

**PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

**POOLING MINUTES:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment

period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

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**Modifications to 9VAC25-820 - General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia:** Staff intends to ask the Board at their June 25, 2012 meeting to adopt amendments to the General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). These amendments are a result of legislation passed during the 2012 General Assembly session. Chapters 808 and 748 of the 2012 Acts of Assembly relate to the expansion of the nutrient credit exchange program for implementation of the Chesapeake Bay Total Maximum Daily Load (TMDL). The regulation amendments are necessary to conform to changes in the Code of Virginia and are exempt from Article 2 of the Administrative Process Act. Changes to the existing regulation include:

1. Expansion of the trading program to allow smaller, "non-significant" dischargers to generate compliance credits which may be provided to other dischargers. Under the current regulation, only the larger "significant" facilities with wasteload allocations in the Water Quality Management Planning Regulation are able to generate compliance credits.
2. Elimination of the requirement to submit a redundant annual report in addition to a year end Discharge Monitoring Report.
3. Provisions allowing new or expanding facilities to offset new loads with compliance credits. The existing point sources operating under this permit were 20% below their aggregate Nitrogen cap and 47% below their aggregate Phosphorus cap in 2011. Allowing new or expanding facilities to make use of the capacity under the cap generated by upgrades at existing facilities will take pressure off of the current offset market.
4. Changes to reflect the planned development of nonpoint source credit certification regulations by the Department of Conservation and Recreation.

**Facility and Aboveground Storage Tank Regulations- 9VAC25-91-10 et seq.:** At the June 25<sup>th</sup> meeting of the State Water Control Board, the department will request the board to adopt Facility and Aboveground Storage Tank Regulations, 9VAC25-91-10 et seq., as proposed regulations. The regulations are being revised to incorporate new performance standards for certain aboveground storage tanks (ASTs) located in the City of Fairfax as mandated by actions taken by the 2011 General Assembly (CH 884). This regulatory amendment will assist facilities located in the City of Fairfax that are required to have their ASTs meet performance standards by July 1, 2021 by providing these facilities with certainty concerning the standards they will be required to meet. These facilities need time to arrange for ASTs to be emptied, upgraded, and retested before being brought back into service. Due to the nature of the terminal in Fairfax, the four facilities at the terminal will need to coordinate the upgrading of ASTs to ensure that capacity is available to handle pipeline deliveries and to prevent the disruption of petroleum deliveries to consumers.

A Regulatory Advisory Panel (RAP) was used to develop the proposal and the RAP reached consensus on the regulatory language concerning performance standards for ASTs located in the City of Fairfax. In addition to these changes, the regulations are being revised to clarify the applicability of the regulations and remove the requirement for registration fees to be paid. The pollution prevention requirement section of the regulation (Section 130) has also been re-organized to make the regulations easier to understand. All changes to the regulations are further detailed below: in the accompanying Town Hall document.

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
10	10	Definitions	A definition of elevated tank is being added to the regulations. This definition is needed since it is a term that is being used in a new section (section 145) of the regulations.
20	20	Applicability	This section clarifies which oil capacities are included when calculating the aggregate storage capacity of the facility.
30	30	Exclusions	An additional exclusion is being described in the regulations to clarify ASTs that are excluded from the regulations. The regulations have excluded ASTs that are part of machinery from the regulations, and the regulations are being revised to further describe the exclusion. This exclusion deals with ASTs that are integral parts of equipment or machinery.
40	40	Compliance Dates	Compliance dates have been revised to incorporate the effective date of the last revision of the regulations.
50	50	Statement of Purpose	The term board is being replaced with the term department since annual reports are submitted to the department.
60	60	Administrative fees	Registration fees will no longer be charged. Fees will still be required for review of Oil Discharge Contingency Plans (ODCP). The regulation clarifies the different facility size categories and the applicable application fee. The agency's address has been revised.
70	70	<del>Notices</del> Correspondence to the Department of Environmental Quality	The agency's address has been revised. The section title has been revised to more accurately reflect the requirements of the section. The section provides details to the regulated community concerning where they should send different correspondence- either the central office or the regional office.
90	90	Evaluation of chapter	This section is being removed since it is no longer applicable. Periodic reviews of the regulations are detailed in a Governor's Executive order.
100	100	Registration requirements	The section of the regulation clarifies when a registration form is required to be submitted.
120	120	Aboveground storage tank closure	Compliance dates have been revised to incorporate the effective date of the last

			<p>revision of the regulations. The term "board" is replacing the term "department" in this section to use terminology consistent with statutory requirements. The section has also been revised to allow for the use of approvable leak detection systems to be used instead of requiring soil sampling.</p>
130	130	Pollution prevention standards and procedures	<p>This section has been reorganized and removes redundant requirements from the regulations. Previously this section listed requirements each category of facilities was required to meet separately. The section has been reorganized to list all of the requirements ASTs with an aggregate storage capacity of 25,000 gallons of oil or more must meet first. Additional requirements facilities with a capacity of 1 million gallons of oil or more must meet are listed following the requirements for facilities with an aggregate storage capacity of 25,000 gallons of oil. In addition to these changes, current industry standards have been mentioned in the regulations.</p> <p><i>Inventory Control</i> Changes have been made to the inventory control and testing for significant variation requirements. Requirements for refineries have been placed after the requirements for facilities. Facilities are no longer required to reconcile physical measurements every time a stored amount is recorded. If a significant variation exists for two consecutive reconciliation periods, the facility operator is then required to reconcile physical measurements. This will reduce the recordkeeping requirements for facilities.</p> <p><i>Secondary Containment</i> Clarifications have been made to the secondary containment requirements. The regulations specify the board's expectations for secondary containment that have been implemented though department policy. The PE certification is described in the regulations. Additionally, the PE certification may include qualifications, which the board may choose to accept. This will provide more flexibility to the facility concerning requirements for secondary containment.</p> <p><i>Safe fill and shutdown procedures</i> Safe fill and shutdown procedures have been clarified. Records of safe shutdown procedures are to be maintained.</p> <p><i>Pressure testing of piping</i> Pressure testing of piping requirements have been revised to incorporate the effective date of the last revision of the</p>

			<p>regulations.</p> <p><i>Visual daily and weekly inspections</i> Visual daily and weekly inspection requirements have been revised to incorporate the effective date of the last revision of the regulations. Facilities may also conduct daily inspections less frequently than daily if normal operations are not being conducted. Facilities may also conduct weekly inspections less than weekly if normal operations are not being conducted. Daily and weekly inspections need to be conducted at least once every 14 days. The regulations are also being clarified to state that when facility inspections identify problems, the problems need to be corrected.</p> <p><i>Training requirements</i> Training requirements are being clarified. Training requirements have been revised to incorporate the effective date of the last revision of the regulations.</p> <p><i>Facilities with an aggregate capacity of 1 million gallons or more</i> In addition to the areas listed above, facilities with an aggregate capacity of 1 million gallons of oil or more must meet the following additional requirements-Formal inspections and reinspections, high level alarm for safe filling of tanks, and cathodic protection of piping. These requirements were previously in the regulations and are not new, but have been grouped into their own subsection of the regulations.</p>
140	140	Performance standards for aboveground storage tanks newly installed, retrofitted, or brought into use	<p>Compliance dates have been revised to incorporate a previous effective date of the regulations. References to NFPA 30 and BOCA are being replaced with a reference to the Uniform Statewide Building Code. The Uniform Statewide Building Code references many codes and standards, and is required to be followed in Virginia.</p>
	145	Performance standards for aboveground storage tanks located in the City of Fairfax	<p>This is a new section being added to the regulation to specifically address the AST facilities with an aggregate capacity of 1 million gallons of oil or greater located in the City of Fairfax. State law requires these tanks to meet certain performance standards by July 1, 2021. The section includes information concerning ASTs the section is applicable to, and includes the performance standards the ASTs must meet, including requirements for strength testing, and release prevention barriers.</p>
150	150	Recordkeeping	<p>This section has been clarified to state inspection records are to be kept.</p>
160	160	Variances to the requirements of part III (9VAC25-91-130 et seq.) of	<p>Additional variances by regulation are being added to the regulation. These additional variances allow for a facility to</p>

		this chapter	obtain a variance from the regulation without petitioning the board. The additional variances are common variances requested by the regulated community and granted by the board. Adding these variances to the regulations removes the requirement for a facility to petition the board for a variance if the conditions of the variance are being met. This reduces the regulatory burden on the regulated community as well as the department's resources.
170	170	Contingency plan requirements and approval	The regulation is being clarified to include the purpose of Oil Discharge Contingency Plans. The term board is being replaced with the term department to be consistent with statutory requirements. Statutory references are being updated. A deadline is also being included in the section for the board to receive notification of amendments to the Facility Response Plan (FRP) if the FRP is part of the ODCP.
180	180	Groundwater characterization study (GCS)	The term department is being replaced with the term board to be consistent with statutory requirements.
200	200	Reporting; GCS well monitoring report	The term board is being replaced with the term department since annual groundwater reports are required to be submitted to the department, not the board.
220	220	Resources available	This section is being revised to list the many resources that may assist the regulated community with maintaining compliance with the numerous codes and regulations ASTs are subject to. Depending on the size of the tank, and tank construction, there are many requirements or standards that may be applicable to the AST. Tanks are manufactured to meet certain standards that vary depending on the type of tank, the intended contents of the tank, and the location of the tank. This section acts as a list of resources the regulated community may wish to consult when selecting an AST to use, upgrading an existing tank, or inspecting tanks.
		Documents incorporated by reference	Some documents previously listed in section 220 are being incorporated by reference.

**Consideration to Designate a Portion of Bull Run as Exceptional State Waters:** Staff intends to ask the Board at their June 25, 2012 meeting to withdraw the Notice Of Intended Regulatory Action (NOIRA) for a rulemaking to amend the Water Quality Standards regulation to designate a segment of Bull Run as Exceptional State Waters (ESW). At the August 4, 2011 meeting, the Board directed staff to initiate a rulemaking to consider amending section 9 VAC 25-260-30.A.3 of the Water Quality Standards to designate Bull Run as Exceptional State Waters from the confluence of Little Bull Run downstream to the crossing of Interstate 66. The rulemaking began as the result of a petition from the National Park Service to designate that portion of Bull



Run that runs along and through Manassas National Battlefield Park. A NOIRA was published November 11, 2011 and the comment period closed January 3, 2012. Comments were received from Fairfax County, Luck Stone Co., and VA Dept. of Transportation. All opposed the designation primarily due to impacts the designation would potentially have on storm water permits related to highway construction in the watershed and also due to uncertainty of impacts to upstream activities that may have the potential to degrade water quality. Subsequent to the close of the comment period, a letter was received from the National Park Service expressing their desire to withdraw the petition to designate.

**Approval of 3 Total Maximum Daily Load (TMDL) Reports and Amendment of the Water Quality Management Planning Regulation to Incorporate 3 TMDL Waste Load Allocations:** Staff will ask the Board to approve portions of three TMDL Reports and adopt amendments to two sections of the Water Quality Management Planning (WQMP) regulation: 9 VAC 25-720.90.A (Tennessee – Big Sandy River Basin) and 9 VAC 25-720.100.A (Chowan River Basin). The amendments consist of adding three new waste load allocations (WLAs). All TMDL reports containing these WLAs have been approved by EPA. The Clean Water Act (“CWA”) and the U.S. EPA Water Quality Management and Planning Regulation (40 CFR §130) require states to identify waters that are in violation of water quality standards and to place these waters on the state’s 303(d) List of Impaired Waters. Also, the CWA and EPA’s enabling regulation require that a TMDL be developed for those waters identified as impaired. In addition, the Code of Virginia, §62.1-44.19:7.C requires the State Water Control Board (“the Board”) to develop TMDLs for impaired waters. A TMDL is a determination of the amount of a specific pollutant that a water body is capable of receiving and still meets water quality standards for that pollutant. TMDLs are required to identify all sources of the pollutant and calculate the pollutant reductions from each source that are necessary for the attainment of water quality standards. Every TMDL consists of three basic components. They are the point source component called the waste load allocation (“WLA”), the nonpoint source component called the load allocation (“LA”), and the margin of safety component (“MOS”). The TMDL is equal to the sum of these three components. The U.S. EPA’s Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate EPA-approved TMDLs in the state’s Water Quality Management Plan. Also, U. S. EPA’s Water Quality Management and Planning Regulation 40 CFR§122.44(d) (1) (vii) (B) requires that a new or reissued VPDES permits be consistent with the TMDL WLA. This means that the WLA component of the TMDL will be implemented through the requirements specified in the VPDES permits; for example, through numeric water quality based effluent limitations or in certain cases best management practices (“BMPs”). Virginia is implementing the LA component using existing voluntary, incentive and regulatory programs such as the Virginia Agricultural Cost-Share Program. Specific management actions addressing the LA component are compiled in a TMDL Implementation Plan (“TMDL IP”), which is also a requirement of the Board under State Code (§62.1-44.19:7.A). Staff will present 3 EPA-approved TMDL reports and the subsequent WLA modifications that are necessary in the WQMP Regulation for Board approval. The TMDL reports cover the following:

1. The North Fork Holston Mercury TMDL located in Scott, Washington, Smyth, Bland, Tazewell, and Russell counties, which proposes reductions for portions of the watershed and provides a total mercury waste load allocation of 11.9 grams/year.
2. The Albemarle Canal/North Landing River TMDL, located in the Cities of Virginia Beach and Chesapeake, which provides a waste load allocation of 989.96 kg/yr.
3. The Northwest River TMDL, located in the City of Chesapeake and in the eastern portion of the City of Virginia Beach, which provides a Total Phosphorus waste load allocation of 3,262.86 kg/yr.

The specific portions of the TMDL reports to be approved include the TMDL itself and all the TMDL allocation components, the pollutant reduction scenarios, implementation strategies, and reasonable assurance that the TMDL can be implemented and a summary of the public participation process. The process for amending the WQMP Regulation is specified in DEQ’s “Public Participation Procedures for Water Quality Management Planning”. The amendments consist of adding three new WLAs that are included in TMDL reports previously approved by EPA. Staff will therefore propose that the Board, in accordance with §2.2-4006A.4.c and

§2.24006B of the Code of Virginia, adopt the amendments to the WQMP Regulation (9 VAC 25-720) as provided.

**REPORT ON FACILITIES IN SIGNIFICANT NONCOMPLIANCE:** Two permittees were reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter ending December 31, 2011. The permittees, their facilities and the reported instances of noncompliance are as follows:

1. Permittee/Facility: **Coeburn Norton Wise Treatment Authority, Regional Wastewater Treatment Plant**  
Type of Noncompliance: **Failure to Meet Permit Effluent Limits (Ammonia as Nitrogen)**  
City/County: Coeburn, Virginia  
Receiving Water: Guest River  
Impaired Water: The Guest River is impaired because of the presence of excessive amounts of E. coli and Fecal Coliform. The source of the impairment is believed to be residential sewage discharges in unsewered areas. Additionally the River is assessed as impaired because of the presence of PCBs in fish issue. The source of the PCB contamination is unknown.  
River Basin: Tennessee and Big Sandy River Basin  
Dates of Noncompliance: September, October and November 2011  
Requirements Contained In: VPDES Permit  
DEQ Region: Southwest Regional Office  
Staff from the Southwest Regional Office are in the process of evaluating this case for enforcement action. An upgrade and expansion of the treatment plant, designed to provide complete ammonia nitrogen removal, has been proposed by the Authority as long term corrective action. In the short term the Authority proposes changes in operational procedures at the plant to both prevent the washout of solids and enhance ammonia removal through increased sludge recirculation during periods of high flows. It is anticipated that a consent special order, containing both long term and short term corrective actions, will be presented to you for approval at your next quarterly meeting.
2. Permittee/Facility: **Dupont Teijin Films, "Hopewell" Facility**  
Type of Noncompliance: **Failure to Meet Permit Effluent Limits (Biochemical Oxygen Demand)**  
City/County: Chesterfield, Virginia  
Receiving Water: James River  
Impaired Water: The James River is listed as impaired due to the presence of an inadequate benthic community, inadequate submerged aquatic vegetation, low dissolved oxygen, high chlorophyll a, the presence of excessive E. coli and the presence of PCBs in fish tissue. The source of the PCB contamination is believed to be contaminated sediment. The sources of the other impairments are unknown.  
River Basin: James River Basin  
Dates of Noncompliance: November and December 2011  
Requirements Contained In: VPDES Permit  
DEQ Region: Piedmont Regional Office  
A consent special order, with an administrative penalty has been drafted by staff of the Piedmont Regional Office and is expected to be presented to you for your approval at your next quarterly meeting. Dupont has indicated that the violations were apparently related to a need to change operational procedures to accommodate wastewater discharges from still bottom truck cleaning operations during periods when treatment plant biomass health is not optimal because of the shut down of process lines.

**The Hampton Roads Sanitation District (“HRSD”), the Cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg, the Counties of Gloucester, Isle of Wight, and York, the James City Service Authority, and the Town of Smithfield (the “Localities”) -**

**Consent Special Order - Amendment:** The State Water Control Board entered into a Special Order by Consent (“Order”) effective September 26, 2007 with the Hampton Roads Sanitation District, the Cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg; the Counties of Gloucester, Isle of Wight, and York; the James City Service Authority; and the Town of Smithfield (“HRSD and the Localities”). The Order addresses Sanitary unpermitted discharges of sewage from the interceptor sewer systems (owned by HRSD) and sanitary sewer collection systems (owned by the Localities), and requires HRSD and the Hampton Roads Localities to cooperatively address these discharges.

The Order includes as Attachment 1, Regional Technical Standards (“RTS”) to ensure consistency in the manner in which HRSD and the Localities address the unpermitted discharges. RTS Section 7.6.1 requires that HRSD and the Localities submit to DEQ for approval Rehabilitation Plans within 62 months of the effective date of the Order (due date of November 26, 2012). These plans are to define specific measures that will be taken to reduce the discharges at the selected level of service, the cost associated with the proposed rehabilitation, and the planned timeframe for rehabilitation activities. The Order Section D.3. requires that HRSD and the Localities jointly develop and submit to DEQ for approval within 74 months of the effective date of the Order (due date is November 26, 2013) a Regional Wet Weather Management Plan (“RWWMP”). The RWWMP is to establish a level of service that will form the basis for planning capacity enhancements; identify, quantify, prioritize, and propose a schedule for implementing regional sanitary sewer system enhancements; and address the funding of such enhancements, among other things. In addition to the Consent Order, HRSD is subject to an EPA/DEQ Consent Decree (entered February 23, 2010) that also requires HRSD to undertake certain activities to address the unpermitted discharges and that also requires submission of a RWWMP establishing a level of service by November 26, 2013. The Consent Decree at Section XXIX provides that if the parties to the Consent Decree agree, the deadline of November 26, 2013 may be amended as appropriate to July 31, 2014. DEQ recognizes potential conflicts and timing issues associate with the submission of the Rehabilitation Plans and the RWWMP as currently scheduled in the Order. Modification of the Order is proposed to amend the due dates for submission of the Rehabilitation Plans and the RWWMP to conform to the language of the Consent Decree date for submission of the RWWMP. Extension of these due dates benefits the ultimate goals of the Order by: 1. allows for consideration of the level of service during the rehabilitation planning phase; 2. allows negotiation of the estimated post rehabilitation peak flows to be based on HRSD and Locality discussion regarding cost effective regional capacity management solutions; 3. provides for more effective and efficient rehabilitation implementation scheduling, and 4. provides for submittal of the RWWMP consistent with the EPA/DEQ Consent Decree. In addition, simultaneous development of the Rehabilitation Plans and the RWWMP eliminates the need for DEQ to approve the Rehabilitation Plans (based on a level of service) prior to submission of the RWWMP which is to propose a level of service.

**Bundick Well and Pump Company - Accomack Co. - Consent Special Order w/Civil Charges:** Bundick Well and Pump Company (“Bundick”) provides well drilling and service, septic system installation and service, septic tank pumping, water and sewage system inspections, water conditioner/Simplus Unit sales and installation, geophysical logging, induction logging, camera well logs and drilling of geothermal heat pump loops on the eastern shore of Virginia and Maryland. The main office is located in Painter, Virginia. On July 8, 2011, Virginia Department of Health (“VDH”) staff observed a Bundick driver pumping the contents of a truck into the Bundick Southern Septage Lagoon (“Lagoon”). The Lagoon is a former septage lagoon that was closed by VDH on January 1, 2008. Reportedly, the driver had pumped 16,000 gallons of industrial waste wash water from the Kingston Tomato Packing Shed in Westover, Maryland into the Lagoon. The Lagoon is not a facility approved by the State Water Control Board (“Board”) to treat or control industrial wastes or other wastes. Bundick does not have a current permit to operate the Lagoon as a waste handling or treatment facility. On September 26, 2011, DEQ issued Notice of Violation No. W2011-09-T-001 (“NOV”) to Bundick for operating a facility that has the potential to discharge industrial wastes to state water without a permit issued by the Board.

The Order requires Bundick to pay a civil charge and to install vehicular access controls on the road to the Lagoon within 30 days of the effective date of the Order. The installation of the controls is expected to cost less than \$1,000. Civil Charge - \$10,982.

**City of Chesapeake, Lake Gaston Water Treatment Plant - Consent Special Order w/Civil Charges:** The City of Chesapeake ("City") owns and operates the Lake Gaston Water Treatment Plant, which treats raw water for public distribution. The Permit allows the City to discharge wastewater generated by the treatment process, in compliance with effluent limits, through outfall 001 at the Plant. On April 8, 2010, the City reported that 141,600 gallons of partially treated water had overflowed from flocculation basins, through a ditch system (not a permitted outfall) due to operator error. A subsequent letter from the City on April 15, 2010 stated that the amount of the discharge that ultimately entered state waters was unknown. On May 7, 2010 a Warning Letter was issued to the City for the unpermitted discharge. On July 1, 2010, the City reported that 120,883 gallons of partially treated raw water had overflowed the "floc zone" due to an electronic problem, with approximately 50,000 gallons of flocculated water entering state waters through the ditch system. On September 7, 2010, DEQ issued a Notice of Violation ("NOV") to the City for the unpermitted discharge to state waters. Following the July 1<sup>st</sup> discharge the City made improvements to the Facility to correct the design flaw that allowed the unpermitted discharges to reach the ditch system. The Order requires the City to pay a civil charge within 30 days of the effective date of the Order. The Order also requires the City to complete a Supplemental Project ("SEP") as partial settlement of the civil charge. The SEP proposed by the City is to provide the SEP amount of the civil charge funds to the Elizabeth River Project Living River Restoration Trust for the "Paradise Creek" restoration project. The cost of compliance is expected to have been less than \$5000, since the City implemented an in-house software-only adjustment to stop the flow of incoming raw water according to existing level indicators. The Order was executed on March 19, 2012. Civil Charge: \$7,735 is proposed; \$775 cash payment and \$6,960 to the Elizabeth River Project Living River Restoration Trust for the "Paradise Creek" project.

**Coastal Precast Systems, LLC - Chesapeake - Consent Special Order with a civil charge:** Coastal Precast Systems, LLC, ("CPS") manufactures precast/prestressed concrete noise walls and other concrete structural and architectural products. CPS is subject to VPDES Permit No. VA0089818 ("Permit"), which was issued on August 4, 2008, and expires August 3, 2013. The Permit authorizes CPS to discharge storm water from its three external outfalls (Outfalls 001, 002 and 003) under conditions outlined in the Permit. Among other things, the Permit requires CPS to monitor the discharges from Outfalls 001 and 002 for flow, pH, total suspended solids ("TSS"), total petroleum hydrocarbons ("TPH"), and chemical oxygen demand ("COD") (discharges from Outfall 003 are not monitored) and report the results to DEQ on Discharge Monitoring Reports ("DMRs") monthly [Outfall 001 (flow, pH, TSS, COD)] and quarterly [Outfall 001(TPH); Outfall 002(all parameters)] by the tenth day of the month following the respective reporting period. Outfall 002 discharges storm water runoff from a paved roadway that runs through the center of the Facility and is collected in a series of drop inlets; Outfall 001 discharges from a pond in the northwest corner of the Facility that collects storm water from the Facility's main production and storage areas. The Permit also prohibits the storm water retention pond associated with Outfall 001 from receiving contaminated storm water runoff and prohibits the discharge of pollutants into State waters except in compliance with the Permit. During a routine Facility inspection on November 12, 2010, and subsequent record review, DEQ staff documented that the DMRs and associated chains of custody and reports of analysis for February, June and November 2009 and the 1<sup>st</sup> and 3<sup>rd</sup> Quarters of 2010 were incomplete. In a letter to CPS dated December 12, 2010, staff requested that the DMR deficiencies be corrected by January 12, 2011. Despite followup letters from DEQ dated January 24, 2011, March 9, 2011, and April 12, 2011, the requested information was not provided. CPS was advised of the above Permit non-compliance issues in NOV #W2011-05-T-0003 dated June 7, 2011. The DMR for Outfall 001 for January 2011 reported a TSS level of 67 mg/l; the permitted maximum is 60 mg/l. The DMR for Outfall 002 for the 1<sup>st</sup> Quarter 2011 reported a pH level of 10 Standard Units ("SU"); the permitted maximum is 9 SU. No letters of explanation for were provided for either of these violations. CPS was advised of the above Permit non-compliance issues in NOV #W2011-04-T-0002 dated April 26, 2011. On March 10, 2011, DEQ compliance staff ("staff") conducted an inspection of the Facility and observed storm water flowing from the Facility's production area in a northerly direction into the storm water retention pond associated with Outfall 001 through

a swale, which was filled with apparent cementitious material. The storm water entering the pond through the swale was tested by staff and determined to have a pH of 12.0 SU. A large deposit of apparent cementitious material was observed in the pond at the point where the storm water from the swale enters the pond. Storm water was also entering the pond from a ditch that captures storm water from the area of the Facility to the west of the pond where waste concrete is stored. The water in the ditch at the point where it entered the pond was observed to be slightly turbid, tested by staff, and determined to have a pH of 9.4 SU. Staff also observed storm water that had collected in the ditch to the west of the storm water retention pond overflowing the ditch and discharging into State waters. The water discharging from the ditch was tested by staff and determined to have a pH of 9.4 SU. The deficiencies observed during this Facility inspection were also included in NOV #W2011-04-T-0002 dated April 26, 2011. A representative of CPS responded to the April 26, 2011, NOV by letter dated May 6, 2011, in which he attributed the elevated TSS reported on the January 2011 DMR for Outfall 001 to wind having blown dust and dirt into the storm water retention pond and the elevated pH reported on the 2<sup>nd</sup> Quarter 2011 DMR for Outfall 002 to dust generated by vehicular traffic on the main roadway being deposited in the drop inlets. The response committed CPS to improve overall Facility housekeeping and to reduce vehicular traffic on the main roadway. The response continued that a berm had been created along the side of the storm water ditch to prevent future unauthorized discharges. Representatives of CPS met with DEQ compliance and enforcement staff on July 20, 2011, to discuss possible physical and operational changes that could be made at the Facility to prevent storm water from coming into contact with pollutants. The CPS representatives stated that they would be extending the paved portion of the central roadway to reduce the amount of dust and dirt that enters the drop inlets and acknowledged that they had not fully understood the distinction between process waste water and storm water as it related to the storm water retention pond. CPS representatives have been working with DEQ permitting staff to develop a solution. On August 4, 2011, CPS submitted a proposed plan to expand the size of the storm water retention pond, to construct a settling basin that would trap the sediment entrained in the storm water before it entered the retention pond, and to possibly modify the Permit to allow Outfall 001 to discharge treated process waste water. The DMR for Outfall 001 for the 3<sup>rd</sup> Quarter 2011 did not record a value for TPH. No letter of explanation was provided for this DMR deficiency. CPS was advised of this Permit non-compliance issue in NOV #W2011-09-T-0001 dated September 27, 2011. The DMR for Outfall 001 for the 4<sup>th</sup> Quarter 2009 did not record a value for TPH. The DMR for Outfall 002 for the 2<sup>nd</sup> Quarter 2011 reported an inaccurate value for TPH as one of the two major components of TPH – diesel-range organics – had not been analyzed. The DMR for Outfall 001 for September 2011 reported a TSS level of 200 mg/l; the permitted maximum is 60 mg/l. No letters of explanation for were provided for the DMR deficiencies and TSS exceedance. CPS was advised of the above Permit non-compliance issues in NOV #W2011-11-T-0001 dated November 8, 2011. The DMRs for Outfall 002 for the 4<sup>th</sup> Quarter 2009 and the 2<sup>nd</sup> and 4<sup>th</sup> Quarters 2010 reported pH levels of 9.4 SU, 9.6 SU, and 9.8 SU, respectively; the permitted maximum is 9 SU. No letter of explanation was provided for the 2<sup>nd</sup> Quarter 2010 pH exceedance. These Permit non-compliance issues were not the subjects of an NOV or Warning Letter. The Order requires CPS to pay a civil charge within 30 days of the effective date of the Order. CPS has made structural changes to the ditch that leads to the storm water retention pond to reduce the potential for another unpermitted discharge and has taken steps to reduce or eliminate contaminated storm water from entering the retention pond. To ensure sustained compliance with the Permit the Order also requires CPS to submit to DEQ, by September 15, 2012, for review and approval a corrective action plan (“plan”) and schedule to: reduce the amount of pollutants that enter the drop inlets associated with Outfall 002; prevent process wastewater and contaminated storm water from entering the storm water retention pond associated with Outfall 001; ensure the completeness and accuracy of DMRs and associated chains of custody; and improve CPS’s responsiveness in explaining the causes of and actions taken in response to Permit violations reported on DMRs. Any construction or physical alterations to the Facility required by the approved plan and schedule are to be complete by September 30, 2013. Civil Charge - \$14,315.

**City of Martinsville - Consent Special Order w/ Civil Charges:** The City of Martinsville (“the City”) owns and operates the Martinsville Water Treatment Plant (“the Plant”) for the purpose of treating and providing

drinking water to the residents and businesses of the City. On October 16, 2011, the Facility had a release of fluorosilicic acid ("the Acid"). The release was reported to the Department on October 17, 2011. The Acid is stored in a 6,000 gallon above ground storage tank. The tank is situated inside a containment area, as required. A transfer pump, situated inside the containment area, is used to move the Acid from the storage tank to the water purification process. Due to the extremely corrosive nature of the Acid, the transfer pump failed resulting in a release of the Acid into the containment area. The containment area contains a 2 inch valve which allows for the draining of the containment area when rain water has accumulated. Prior to October 16, 2011, the valve had been opened and inadvertently left open. Consequently, the Acid spilled onto the ground and flowed into the drain, the Plant's storm drain, off-site, and into state waters. On October 18, 2011, Department staff responded to a reported fish kill on Jones Creek in Martinsville, Virginia. Department staff observed a fish kill, estimated using American Fisheries Society methods, of 4,445 fish. The fish kill was observed originating from the storm drain outfall at the Plant, and continuing downstream to the confluence of Jones Creek and Beaver Creek covering approximately 3700 meters (2.3 miles). The observed fish kill coincides in time and location with the October 16, 2011 release of the Acid, which entered Jones Creek from the storm drain at the Plant. On November 9, 2011, the Department issued Notice of Violation ("NOV") No. NOV-11-11-BRRO-R-001 to the City of Martinsville for the unpermitted discharge to state waters. The Order before the Board assesses a civil charge to the City for the unpermitted discharge to state waters. The Order also requires the City to pay the costs associated with DEQ's investigation and the fish replacement costs (to be paid to DGIF). The City asserts that it expended over \$30,000 in its spill response and remediation efforts to clean up the spill. Civil Charge: \$13,500.

**Fairfax County School Board /Gunston Elementary School STP - Consent Special Order - Amendment:** Gunston Elementary School is located at 10100 Gunston Road, Lorton, Virginia (Fairfax County) and is owned and operated by the Fairfax County School Board ("School Board"). The Gunston Elementary Sewage Treatment Plant ("STP"), VPDES Permit No. VA0023299 (the Permit), discharges via Outfall 001 to the South Branch of Massey Creek which is located in the Potomac Shenandoah River Basins. During 2007, 2008, and 2009 the School Board violated the Permit's effluent limits as well as its requirement to submit an O&M update for DEQ. As a result of these violations of the Permit, DEQ issued Notices of Violation (NOVs) to the School Board. To resolve the violations, the School Board and DEQ entered into a Consent Order (Order) on June 22, 2010. The Order required the School Board to submit a plan for either the repair or modification of the existing STP and to complete the chosen option within 2 years of DEQ approval (June 22, 2012). The School Board chose to modify the existing STP. On January 27, 2012, Mark G. La Croix, Environmental Health Engineer for the Fairfax County Public Schools submitted an email to staff of DEQ's Northern Regional Office stating that design plans and specifications for the plant modification, as well as an application for a building permit, had been submitted to Fairfax County for review, and approval almost a year ago and had yet to be approved. The delay has been caused by Fairfax County requiring the engineer to submit multiple revisions of the plans and to submit a soil study and separate storm water management plan in the Fall of 2011. These factors have significantly contributed to the delay in the construction schedule set forth in the Order. Mr. LaCroix stated that due to the delay in obtaining the building permit it is unlikely construction would begin before the June 22, 2012 deadline required by the Order and therefore he requested an extension for completion of construction to August 31, 2013. On March 12, 2012, the School Board reported on the DMR for the February 2012 monitoring period, violations of the maximum and average Permit effluent limits for concentration for Ammonia as Nitrogen. In order to allow for the extension and resolve the effluent violations, DEQ is amending the Order. The Amended Consent Order (ACO) will provide a resolution through the implementation of a new compliance schedule. The ACO requires that no later than August 31, 2013, the School Board complete the modification of the STP as described in the approved Plan submitted by the School Board and dated May 19, 2010.

**McGill Environmental Systems of N.C., Inc. - Consent Special Order with Civil Charges:** McGill owns a biosolids company which regularly transports sewage sludge and biosolids from regional WWTPs to

application sites. In November 2007, VDH issued VDH BUR Permit No. 154 to McGill. After the transfer of the biosolids program to DEQ on January 1, 2008, DEQ administratively continued VDH BUR Permit No. 154, under the DEQ VPA program, and the Permit will expire on December 31, 2012. On June 9, 2011, McGill released Rivanna Water and Sewer Authority (RWSA) sewage sludge, which did not meet Class B standards for volatile solids reduction and retention time, onto and adjacent to Interstate 295 just west of Route 1 in Henrico County, Virginia. DEQ staff were notified, and conducted an investigation at the spill site. DEQ staff determined that the tailgate on the transport truck hauling RWSA sewage sludge had failed to remain closed due to a defective tailgate, and had deposited the sewage sludge on the pavement of I-295. The transport truck also deposited sewage sludge on the shoulder and ditch of I-295 approximately ¼ mile east on I-295 from the first sewage sludge spill on the pavement. The sewage sludge deposited on the shoulder and ditch of I-295 was due to the opening of the transport truck trailer in order to reclose the tailgate properly. DEQ staff observed multiple vehicle accidents due to the sewage sludge spill. DEQ staff observed a contractor hired by VDOT conducting clean up of the sewage sludge from the travel lanes of I-295. On June 9, 2011, DEQ staff returned to the site of the spill and observed that travel lanes had been cleared, however, 10 gallons of sewage sludge remained at the second spill site in the ditch adjacent to I-295, which is a tributary of Turner Run. On June 10, 2011, the driver of the transport truck attempted to clean up the second spill site, however, the driver stated she was prevented from doing so by state police due to safety concerns since proper safety precautions had not been taken. Subsequently, the site of the spill received 1.4 inches of rain and some of the sewage sludge was washed away into state waters due to the rain event. DEQ did not receive a written report of the spill incident within five working days of the spill. On June 14, 2011, DEQ staff returned to the second spill site and observed that the sewage sludge remained. DEQ staff cleaned up the remaining sewage sludge on June 15, 2011. One month after the incident DEQ received the written report regarding the spill. McGill indicated it was re-writing its “spill response plan” to address additional safety latches on transport trailers and spill response actions for transport drivers and other McGill staff. DEQ issued a NOV to McGill for violations of the permit and Virginia Code and Regulations. On September 1, 2011, DEQ staff met with representatives of McGill to discuss the violations. McGill reiterated it had looked at its processes and revised the handling manual to be given to drivers, so that spill response would be better. McGill stated that it now has two contractors it can contact to clean up spills quickly. McGill agreed to the Consent Special Order with DEQ. The Order only requires the payment of a civil charge. Civil Charge: \$10,413.

**City of Newport News - Consent Special Order w/Civil Charges:** The address of 12971 Jefferson Ave, Newport News was owned by a private property owner (“Property”) and is the site of approximately 25.7 acres of a 10-year wetland restoration and monitoring plan according to a Federal Consent Decree (“Decree”) dated May 20, 2005 (Civil Action No. 2:01cv508). By July, 2010, the restoration and plan for the site had been in progress for 5 years. In July 2010, a City of Newport News (City”) work crew mowed approximately 15 acres of the restoration and monitoring site in response to complaints of tall vegetation on the Property. The City work crew mowed the Property despite several notices from the property owner that it was a wetland restoration site and cannot be mowed. The City accepted responsibility for the mowing and attributed it to a failure of internal communications between City departments that the Property was not to be mowed. On August 23, 2010, DEQ issued a notice of violation to the City for unpermitted impacts to wetlands. In January 2012, the City agreed to assume the primary responsibilities for restoration and monitoring of the Property and to purchase the Property. On February 22, 2012, the Property was deeded to the City. On March 31, 2012, the City subjected five acres of forested wetlands owned by the City to a recorded Declaration of Restrictions as compensation for functional losses due to the mowing. The Order requires the City to pay a civil charge within 30 days of the effective date of the Order. The Order also requires the City to provide a corrective action plan to restore the mowed 13.7 acres, and maintain responsibility for restoration and monitoring of the wetlands for 5 years after termination of the Decree (May 2020). The Order was executed on April 10, 2012. Civil Charge: \$12,500.

**VA Timberline, LLC Lawnes Point Subdivision - Isle of Wight Co. - Consent Special Order w/Civil Charges:** VA Timberline, LLC (“Virginia Timberline”) was constructing Lawnes Point (“Property”), a 155 lot residential subdivision on the approximately 1300-acre site on the James River in Isle of Wight County. VA Timberline was subject to VWP General Permit Authorization No. WP4-04-2205 (“Permit”) which was issued July 21, 2005 and expired July 20, 2010. The Permit authorized VA Timberline to impact a total of 0.66 acres of non-tidal forested wetlands for the purpose of constructing six road crossings (0.11 acres each) over tributaries to Lawnes Creek for additional Property access. In addition to the 0.66 acres of authorized wetlands impacts, the Permit required VA Timberline to provide a “Barking Tree Frog Habitat Creation/Preservation Plan” (“Plan”), to be approved by DEQ and DGIF, and implement the approved Plan. The Plan was approved on August 30, 2005. During a July 19, 2006 inspection of the Property, it was observed that the habitat creation ponds were not vegetated and no plantings had occurred. Subsequent file reviews in August 2008 found that no reports concerning the Plan or monitoring reports had been received since 2007, nor had DEQ received proof of recordation of the restrictive instrument in the Property title, or installation of protective signage as required by the Permit. On September 9, 2008, DEQ issued a Notice of Violation to VA Timberline for noncompliance with the Permit and Plan. During 2008, VA Timberline subsequently recorded the restrictive instrument and installed the protective signage. A Corrective Action Plan for the barking tree frog habitat creation areas was submitted and approved, and during 2009, monitoring reports indicated that the four barking treefrog habitat creation areas were showing success. On August 13, 2010, DEQ received the final monitoring report for the four barking tree frog habitat creation areas, which indicated successful establishment of vegetation and hydrology, and on September 30, 2010, the Department of Game and Inland Fisheries agreed that the habitat creation areas met success criteria and no further work was needed. The Order requires VA Timberline to pay a civil charge within 30 days of the effective date of the Order. Civil Charge: \$2,500.

**Warren E. Beery-Dry River Impacts - Rockingham Co. - Consent Special Order w/Civil Charges:** Mr. Beery is a land owner along the Site on the Dry River, located near the Town of Dayton in Rockingham County. Mr. Beery and several other landowners along Dry River have experienced a past history of flooding problems and damage to pasture and cropland. Mr. Beery had previously attempted to obtain a permit in 2004 and 2006 to perform dredging/excavation on the Dry River to fix problems after flooding events and to prevent flooding during high water events as “necessary” to repair the stream channel. On both occasions, the USACE and DGIF advised him that they could not issue an open-ended permit, but indicated that they would work with him to provide a permit to perform some work on the stream. However, there was no follow-up by Mr. Beery. In both 2004 and 2006, Mr. Beery contacted his legislative representatives in an attempt to expedite approval of an open-ended type of permit. DEQ responded to these legislators’ inquiries and indicated that state or federal laws did not allow DEQ to issue a Permit for the work Mr. Beery described (as something that could be done at his discretion or without public or other agency input). On May 7, 2009, DEQ received a report of potential unauthorized dredging/excavation that occurred on the Dry River near the Route 752/Route 737 bridge in Rockingham County. On May 12, 2009, DEQ staff and USACE investigated the report and met with Mr. Beery. During the site inspection, the following was observed:

- a. Approximately 0.63 miles (3,326 linear feet) of Dry River, from the Route 752/Route 737 bridge to the confluence with Muddy Creek, had been channelized;
- b. Accumulated fine sediment and cobble had been pushed against the river banks; and
- c. The construction activity spanned several adjacent properties; however, Mr. Beery indicated that he did the work himself with his farm equipment under no-flow conditions, and with the permission of his neighbors.

A review of DEQ files did not find a Joint Permit Application submitted for the in-stream work. On May 27, 2009, DEQ issued a NOV for the violations observed. On September 15, 2009, DEQ staff met with representatives of Mr. Beery who presented a proposed Corrective Action Plan (“CAP”) for stabilizing and restoring the bed and banks of the Dry River to preexisting conditions. DEQ staff requested additional information to address certain questions regarding the CAP. DEQ did not receive an updated CAP for review and approval. On April 15, 2010, DEQ staff and USACE, VMRC and VDGIF met with Mr. Beery



to observe the altered portion of the Dry River to determine what, if any, changes in the stream course or character had taken place since the May 7, 2009 complaint investigation and to discuss restoration. During the April 15, 2010 meeting, Mr. Beery presented documents for review that were represented as showing he had a "King's Grant" authority to conduct the alterations of the Site. A review of the documents indicated that they were incomplete, preventing a determination as to the validity of a claim of "King's Grant". On November 7 and November 17, 2011, DEQ staff conducted site visits/inspections to determine what, if any, changes had taken place since the last inspection of April 15, 2010 and examine what restoration may be necessary. DEQ staff noted that the high cobble piles in the lower section of the Dry River that were created during the excavation had undergone considerable erosion, resulting in a discharge of sediment (a pollutant) downstream, with little remaining of those original cobble piles. The proposed Order contains a civil charge only. Civil Charge: \$8,036.

**Yimmer, LLC - Henrico Co. - Consent Special Order with Civil Charges:** Yimmer owns and developed the Property and now operates a Japanese restaurant at the Property in Henrico County, Virginia. On November 16, 2006, DEQ issued permit WP1-06-0458 to Yimmer, LLC for wetland and stream impacts associated with the construction of Kan Pai Restaurant. The Permit authorized impacts to 0.20 acres of palustrine forested wetlands and 171 linear feet of stream channel of an unnamed tributary to Little Tuckahoe Creek. The Permit required the purchase of 0.40 acres of wetland credits and to contribute \$90,132 to the Virginia Aquatic Resources Trust Fund ("VARTF"). The Permit also required notification of construction to DEQ, submitted prior to commencement of activities in permitted impact areas and construction monitoring reports submitted to DEQ in association with the permitted activities. The Permit expired on November 15, 2009. DEQ staff conducted a site inspection of the Property, which revealed that the development of the site had been completed and the permitted impacts had been taken. DEQ staff subsequently reviewed the file for permit WP1-06-0458 and found no record of documentation that the 0.40 acres of wetland mitigation bank credits were purchased; no record of a notification of construction submitted prior to commencement of activities in permitted impact areas; and no record of construction monitoring reports submitted in association with the permitted activities. DEQ issued a NOV to Yimmer for violation of the permit and Virginia Code and regulations. Yimmer purchased 0.40 acres of wetland credits as required by the permit and agreed to the Consent Special Order with DEQ to address the above described violations. Civil Charge: \$13,422.